

To: Bowman, Liz[Bowman.Liz@epa.gov]
Cc: Fotouhi, David[fotouhi.david@epa.gov]; Freire, JP[Freire.JP@epa.gov]
From: Schwab, Justin
Sent: Fri 5/12/2017 11:04:06 AM
Subject: Re: Embargoed Pebble Settlement Release

I don't think so. The clean water act thing is right but I'm sure that the second and third are both pending and are both involved in this settlement. Check with DOJ to confirm.

(The "colluded with outside groups" thing is the Federal Advisory Committee Act, or FACA lawsuit.)

Sent from my iPhone

On May 12, 2017, at 7:00 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Is this accurate?

The company has sued EPA on three different fronts, arguing that the agency violated the Clean Water Act, colluded with outside groups to reach its determination and violated the Freedom of Information Act. The first suit was dismissed and the third resolved, leaving just the second suit, which was settled Thursday, pending in federal court in Alaska.

From: Eilperin, Juliet [<mailto:Juliet.Eilperin@washpost.com>]
Sent: Friday, May 12, 2017 6:57 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: RE: Embargoed Pebble Settlement Release

Thanks. And I just want to make sure this is an accurate description of the state of play of the three different lawsuits Northern Dynasty has filed against the EPA, most specifically, I am interested in in finding out how the FOIA suit was resolved. Best, Juliet

The company has sued EPA on three different fronts, arguing that the agency violated the Clean Water Act, colluded with outside groups to reach its determination and violated the Freedom of Information Act. The first suit was dismissed and the third resolved, leaving

just the second suit, which was settled Thursday, pending in federal court in Alaska.

From: Eilperin, Juliet
Sent: Friday, May 12, 2017 6:32 AM
To: Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>
Subject: Re: Embargoed Pebble Settlement Release

Thanks for this. I'm trying to get my folks to publish the post as soon as possible. I finished writing around 11:45 pm. I will let you know when it is up, thanks.

On May 12, 2017, at 6:28 AM, Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)> wrote:

I got a few late updates on the release, so the “final” is below. It was not sent widely last night, I am preparing to send it out now. The agreement was signed late yesterday (the 11th). Let me know if you have any more questions. Thanks – Liz

EPA AND PEBBLE LIMITED PARTNERSHIP REACH SETTLEMENT AGREEMENT

EPA Agrees to Allow Permit Process to Proceed; Pebble Agrees to Drop Lawsuits

WASHINGTON --The U.S. Environmental Protection Agency entered into a settlement agreement with the Pebble Limited Partnership to resolve litigation from 2014 relating to EPA's prior work in the Bristol Bay watershed in Alaska. The settlement provides the Pebble Limited Partnership (Pebble) an opportunity to apply for a Clean Water Act (CWA) permit from the U.S. Army Corps of Engineers before EPA may move forward with its CWA process to specify limits on the disposal of certain material in connection with the potential “Pebble Mine.”

“We are committed to due process and the rule of law, and regulations that are 'regular',” said EPA Administrator Scott Pruitt. “We understand how much the community cares about this issue, with passionate advocates on all sides. The agreement will not guarantee or prejudice a particular outcome, but will provide Pebble

a fair process for their permit application and help steer EPA away from costly and time-consuming litigation. We are committed to listening to all voices as this process unfolds.”

Key Terms of the Settlement:

- Pebble and the U.S. Department of Justice (on behalf of the EPA) will ask the U.S. District Court for the District of Alaska to dismiss the cases with prejudice and to lift the court-ordered preliminary injunction.
- EPA agrees to commence a process to propose to withdraw the currently pending proposed determination, consistent with its regulations.
- EPA agrees that it will not move to the next step in its CWA process, which would be to issue a recommended determination (determination steps are: proposed, recommended, final), until 48 months from settlement or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first. To take advantage of this period of forbearance, Pebble would have to file its permit application within 30 months.
- Pebble will drop its lawsuits and requests for fees against EPA, and agree to file no new Freedom of Information Act (FOIA) requests during the pendency of the "forbearance" period.
- EPA may use its scientific assessment regarding the Bristol Bay Watershed without limitation.

Background:

In 2014, under the previous administration, EPA’s Region 10 completed a multi-year watershed assessment in Bristol Bay, and then initiated a CWA Section 404(c) proposed determination, which described restrictions on large-scale mining in the watershed. Section 404 is the part of the CWA that governs the permit evaluation process for actions that discharge dredged or fill material into a covered water.

The May 11, 2017 settlement does not guarantee or prejudice any particular outcome to this process, but does ensure that the process will be carried out in a fair, transparent, deliberate, and regular way.

###

From: Eilperin, Juliet [<mailto:Juliet.Eilperin@washpost.com>]
Sent: Thursday, May 11, 2017 10:01 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>
Subject: RE: Embargoed Pebble Settlement Release

Thanks, and again, is this going out widely to other reporters? I need to know, in terms of what I tell my editors and how the Post promotes the story when it posts at 6:30 am.

And one other thing—should I say the agreement is being struck Friday, or late Thursday? The statement indicates the agreement is happening on Friday, but I thought you had to file by midnight (though I suppose midnight AK time in Friday morning ET).

Thanks again,

Juliet

From: Bowman, Liz [<mailto:Bowman.Liz@epa.gov>]
Sent: Thursday, May 11, 2017 9:58 PM
To: Eilperin, Juliet <Juliet.Eilperin@washpost.com>
Cc: Freire, JP <Freire.JP@epa.gov>
Subject: Re: Embargoed Pebble Settlement Release

Yes, there will be comments; As required under the regulations.

Sent from my iPhone

On May 11, 2017, at 9:34 PM, Eilperin, Juliet <Juliet.Eilperin@washpost.com> wrote:

Thanks so much, Liz. Is this going out widely, or will the Post have it before other

outlets?

And there will be a public notice and comment period on the withdrawal of the 404(c) determination, correct?

Best, Juliet

From: Bowman, Liz [<mailto:Bowman.Liz@epa.gov>]
Sent: Thursday, May 11, 2017 9:00 PM
To: Eilperin, Juliet <Juliet.Eilperin@washpost.com>
Cc: Freire, JP <Freire.JP@epa.gov>
Subject: Embargoed Pebble Settlement Release

****embargoed until 6:30 a.m. Eastern****

EPA AND PEBBLE LIMITED PARTNERSHIP REACH SETTLEMENT AGREEMENT

*EPA Agrees to Allow Permit Process to Proceed; Pebble Agrees to Drop
Lawsuits*

WASHINGTON --The U.S. Environmental Protection Agency entered into a settlement agreement with the Pebble Limited Partnership to resolve litigation from 2014 relating to EPA's prior work in the Bristol Bay watershed in Alaska. The settlement provides the Pebble Limited Partnership (Pebble) an opportunity to apply for a Clean Water Act (CWA) permit from the U.S. Army Corps of Engineers before EPA may move forward with its CWA process to specify limits on the disposal of certain material in connection with the potential "Pebble Mine."

"We are committed to due process and the rule of law, and regulations that are 'regular'," said EPA Administrator Scott Pruitt. "We understand how much the community cares about this issue, with passionate advocates on all sides. Today's agreement will not guarantee or prejudice a particular outcome, but will provide the Pebble a fair process for their permit application and help steer EPA away

from costly and time-consuming litigation. We are committed to listening to all voices as this process unfolds.”

Key Terms of the Settlement:

- Pebble and the U.S. Department of Justice (on behalf of the EPA) will ask the U.S. District Court for the District of Alaska to dismiss the cases with prejudice and to lift the court-ordered preliminary injunction.
- EPA agrees to commence a process to propose to withdraw the currently pending proposed determination, consistent with its regulations.
- EPA agrees that it will not move to the next step in its CWA process, which would be to issue a recommended determination (determination steps are: proposed, recommended, final), until 48 months from settlement or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first. To take advantage of this period of forbearance, Pebble would have to file its permit application within 30 months.
- Pebble will drop its lawsuits and requests for fees against EPA, and agree to file no new Freedom of Information Act (FOIA) requests during the pendency of the "forbearance" period.
- EPA may use its scientific assessment regarding the Bristol Bay Watershed without limitation.

Background:

In 2014, under the previous administration, EPA’s Region 10 completed a multi-year watershed assessment in Bristol Bay, and then initiated a CWA Section 404(c) proposed determination, which described restrictions on large-scale mining in the watershed. Section 404 is the part of the CWA that governs the permit evaluation process for actions that discharge dredged or fill material into a covered water.

The May 11, 2017 settlement does not guarantee or prejudge any particular outcome to this process, but does ensure that the process will be carried out in a fair, transparent, deliberate, and regular way.

###

